IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. Civil Writ Petition No.2949/07
Krishan Gopal Vs. Dhanna Lal & Ors.

27.04.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri R.P. Vijay for petitioner.

Heard learned counsel for the petitioner.

This writ petition has been filed against the order dated 21.11.06, by which his objection in regard to execution of decree way back on 20.8.1988 disputing description and location of the constructions to be removed was rejected.

Learned counsel for the petitioner argued that the decree was based on the compromise which his father arrived at with the plaintiff and that

his father was mislead and fraud was exercised by the plaintiff by inducing him to enter into the compromise. The learned trial court in its order has noted that the execution of the decree was pending for last 18 years and application filed at this stage cannot be considered to be bona fide and therefore rejected the application.

Learned counsel for the petitioner argued that if the wall on the ground floor is removed, this would endanger the constructions of the first floor. I am not impressed with this argument because the disputed wall appears to have been constructed by the petitioner extending into the land of the respondent and in the compromise that was arrived at between the parties, it was

categorically stated that the defendant would raise a parallel wall towards its side adjoining the disputed wall and accordingly making the constructions on the first floor and in the process if any damage was caused to the wall of the plaintiff, the same would be got repaired by the defendant. Learned counsel for the petitioner at this stage submitted that the Sale Amin / Nazir is not an engineering expert and therefore in the process of execution of decree there is possibility of his entire house being damaged. The petitioner can apply to the executrary Court for offering the services of an expert / engineer at his in aid of the execution of the decree as per the terms of compromise and if he does so, it is expected that the

execution Court shall take a pragmatic view of the matter.

With these observations, the writ petition is dismissed.

(Mohammad Rafiq),J.

Rs/-